THE HON'BLE SRI JUSTICE B. PRAKASH RAO

AND

THE HON'BLE SRI JUSTICE G. BHAVANI PRASAD

WRIT PETITION Nos.23813 and 23408 of 2002

Dated:20th August 2007

W.P.No.23813 of 2002:

Between:

Bayya Chandravathi.

.. Petitioner

And

1. Medinti Venkata Satyanarayana Murthy,
   S/o Markandeyulu.
2. The Registrar, Special Court under
   A.P. Land Grabbing (prohibition) Act at B.R.K.R.
   Buildings, Tank Bund, Hyderabad

. Respondents

and another case.

THE HON'BLE SRI JUSTICE B. PRAKASH RAO

AND

THE HON'BLE SRI JUSTICE G. BHAVANI PRASAD

WRIT PETITION Nos.23813 and 23408 of 2002

COMMON ORDER: (Per Hon'ble Sri Justice B. Prakash Rao)

The petitioner herein, who has been declared as a land grabber, filed these two Writ Petitions, *inter alia,* seeking to assail the common order dated 24.09.2002 in L.G.A.Nos.2 and 3 of 2001 on the file of the Special Court under the A.P. Land Grabbing (Prohibition) Act, 1982 at Hyderabad, dismissing the petitioner's appeal and allowing that of the respondents, which have been filed as against the order dated 31.10.2000 in L.G.C.No.1 of 1996 on the file of the Special Tribunal-cum-Principal District Judge, East Godavari, at Rajahmundry.

Since both these cases arise out of common proceedings, they are taken up together for disposal.

Heard Sri G. Krishna Murthy, learned counsel appearing on behalf of the petitioner, Sri Vedula Venkataramana and Sri K. Venkatesh, appearing on behalf of the first respondent and the learned Government Pleader for Land Ceiling appearing on behalf of the second respondent.

Briefly stated the facts of the case are that the first respondent

herein had filed an application under sub-section (1) of Section 7 (A) of the A.P. Land Grabbing (Prohibition) Act, 1982 (for brevity 'the Act') in L.G.C.No.1 of 1996 before the Special Tribunal to declare the petitioner herein as a land grabber in respect of Plot No.219 situated in Konala Nookaraju lay out plan, admeasuring 150 sq. yards at Rajahmundry and direct her to deliver possession and also award compensation or damages.

The claim of the first respondent in the application squarely rests on the footing that originally the land in T.S.Nos.1938/1, 2 and 4, 1937 and 1941 belonged to Rajahmundry Municipality, which was in turn converted into house plots and prepared a lay out plan known as Konala Nookaraju lay out, and sold the same to various persons, of which, the suit land i.e., Plot No.219 was purchased by the vendor of the first respondent namely Smt. V. Sarala Devi under a registered sale deed dated 16.02.1982, which is marked as Ex.A.2 and she had been in possession all along till the purchase made by him under a registered sale deed dated 18.02.1995, which is marked as Ex.A.1, for a valuable consideration of Rs.75,000/- (Rupees seventy five thousand only) and thus, the first respondent had been in possession all along. However, even prior to the purchase by the first respondent, the petitioner had been threatening the vendor of the first respondent to encroach the land and made unsuccessful attempts and subsequent to

the purchase by the first respondent, the petitioner had illegally grabbed the land without any right, title and interest of what-so-ever. Hence, the application.

After filing the said application, a report of the Mandal Revenue Officer, Rajahmundry was filed on 01.11.1995 in terms of Rule 6 (1) (2) of the A.P. Land Grabbing Rules and this was followed up by the publication of notice in form-II (b) in the A.P. Gazettee as contemplated under Rule

7 (2) of the said Rules on 23.05.1996 and later, on issuance of a notice to the petitioner herein, she appeared and filed a counter by raising an objection to the effect that the alleged sale deeds under Exs.A.1 and A.2 are in no way binding her and further, the first respondent herein was never in possession nor the vendor of the first respondent was also ever in possession. It has been the specific case of the petitioner herein that she has been in possession and enjoyment all along since the year 1973. Since she has been inducted into possession by one Setti Narasimhulu, she has constructed a thatched house, which was given a Municipal No.45-41-19. She has also obtained an electricity connection with No.30545 and there exists a ration card in respect of the same house and thus, she has been in continuous possession and enjoyment on her own right and thus, she has perfected her title by adverse possession. Though the vendor of the first respondent tried to

dispossess her with the assistance of local groups, she continued to remain in possession and therefore, the claim by the first respondent that the petitioner encroached the suit property in February1995 is not correct. Thus, the Tribunal has no jurisdiction to entertain the application and the same is liable to be dismissed.

During the course of enquiry, the first respondent herein examined P.Ws.1 to 6 and marked Exs.A.1 to 17 apart from Exs.X.1 and X.2 whereas the petitioner herein examined herself as R.W.1 and other neighbours as R.Ws.2 to 4 and marked Exs.B.1 to B.49 apart from Exs.X.3 and X.4.

With these and other allegations and the evidence as available on record, the primary Tribunal framed the following points for consideration:

"1. Whether the petitioner has a title to the plot bearing No.219 ?

2. Whether the respondent perfected her title to the plot by way of adverse possession ?

3. Whether the respondent is a land grabber ?

4. To what relief ?"

On consideration of the entire evidence and the material on record, the primary Tribunal initially having accepted the undisputed fact that originally the property belonged to Municipality, held that the first respondent herein has proved his title through Exs.A.2 and A.1 whereas though the petitioner herein has failed to prove her alleged purchase from the said Satti Narasimhulu, the same has not been

established. However, in view of the report of the Mandal Revenue Officer, Rajahmundry and the other evidence on record, it was held by the primary Tribunal that the petitioner herein is able to prove her possession and enjoyment from 1982 in respect of hut bearing NO.45-29-23/6 and therefore, she has proved her possession which is adverse and thereby she perfected her title and consequently allowed the petition partly declaring that the petitioner herein as a land grabber so far as the site appurtenant to the hut bearing No.45-29-23/6 in Plot No.219 and directed for delivery of the site appurtenant to the said hut, however, confirming the absolute right of the petitioner herein in respect of the hut.

As aggrieved against both such findings, the petitioner as well as the first respondent herein have filed the appeals before the lower appellate Court namely the Special Court in L.G.A.Nos.2 and 3 of 2001 respectively. Both the said appeals were taken up for consideration and on a total re-appreciation of the very same evidence and the material on record as has been produced before the primary Tribunal, the lower appellate Court confirmed the finding as to the title of the first respondent basing on the documents in Exs.A.1 and A.2 and the admitted fact that the property was originally belonged to Municipality, however, in regard to the finding given on adverse possession, it was found specifically that the documents filed on behalf

of the petitioner herein do not relate to the suit property and they pertain to totally a different one and therefore, did not accept to place reliance on Exs.B.1 and B.49 and by taking note of her statement to the effect that she has been the resident of D.No.45-41-19, which is a different one and thus, none of the documents filed on behalf of the petitioner herein relate to the petition schedule property and they are totally different one and the said aspect has not been properly considered by the primary Tribunal from a roper perspective. It was held by the lower appellate Court that the petitioner herein has miserably failed to establish her plea of adverse possession and thus, she did not acquire any title by prescription and thereby dismissed the appeal filed by the petitioner and allowed the appeal preferred by the first respondent herein holding that the petitioner is a land grabber and directed for delivery of possession though declined to grant any compensation in favour of the first respondent. Hence, these two Writ Petitions.

Sri G. Krishna Murthy, learned counsel appearing for the petitioner sought to contend that there has been no proper appreciation by the lower appellate Court in regard to the plea of the petitioner on the foot of perfecting her title by adverse possession and having regard to possession which is evident from the very record, the lower appellate Court could not have declared possibly the petitioner

as a land grabber and even otherwise having regard to the findings as arrived at by the primary Tribunal, the lower appellate Court was not right in interfering with the same.

The learned counsel appearing for the first respondent sought to sustain the findings of the lower appellate Court disputing the very claim of the petitioner in regard to any right, title or possession and therefore, the said findings would not be interfered with in exercise of powers conferred under Article 226 of the Constitution of India. Even otherwise, it is also contended that the petitioner on either way did not establish in regard to title as set up or possession as pleaded.

With these and other allegations as made across the Bar from both the sides and on perusal of the material available on record, the only question which arises for consideration in these proceedings at the instance of the petitioner is as to whether the petitioner has established her case as to perfection of title by prescription/adverse possession ?

Having regard to the aforesaid facts and circumstances as emerged on the application filed by the first respondent herein to declare the petitioner herein as a land grabber, the whole case of the first respondent squarely rests and goes on undisputed is to the effect that originally the property belonged to the local Municipality, which was converted into plots after lay out, of which, the plot in question was

purchased by the vendor of the first respondent under Ex.A.2 on 16.02.1982, who in turn sold the same to the first respondent under Ex.A.1 on 18.02.1995. There is no serious dispute in regard to these sales though the purchase as such has been proved duly by the first respondent by examining his vendor as P.W.6 and also the attestor of the sale deed under Ex.A.1 as P.W.2 and the scribe as P.W.3, the other attestor namely Radha Krishna is no more and therefore, the question of producing him does not arise. With this evidence and the documents of title as produced on behalf of the first respondent, it is the finding of the primary Tribunal as well as the lower appellate Court in appeal consistently to the effect that the first respondent has established his title and there is no serious dispute even at this juncture in these Writ Petitions as against either the evidence or the material produced in support of such finding as arrived at, at both the levels. Therefore, the finding as to the title in favour of the first respondent goes unchallenged apart from the fact that it also remained un-rebutted.

The case of the petitioner as set up initially and as continued later in appeal is based on the specific plea that she has been inducted by Setti Narasimhulu in the year 1973 and since then, she has been in possession and at a later stage, it was claimed that the said Setti Narasimhulu had executed a sale document, however, the

same is lost. It is not the case of the petitioner that such a document is a registered one as contemplated under law to have any valid transfer of title. Further, it is the case of the petitioner that the said document was also lost, which was subsequent development and the same was not her case initially in the counter-affidavit filed before the primary Tribunal. That apart, as rightly observed by the lower appellate Court that the petitioner has not come out with any specific case as to how her vendor Setti Narasimhulu had what sort of right, title and interest. Therefore, the petitioner has fallen back on the plea of adverse possession. No-doubt, the primary Tribunal by taking into consideration the report of the Mandal Revenue Officer and the other evidence sought to hold that she has made out her case as to possession since 1982 based upon the documents filed her, however, the very same documents as well as the report have come up for consideration before the appellate Court once again and on a due and threat bare re-examination of the same, it was found that those documents do not relate to the schedule property and therefore, Exs.B.1 to B.49 as sought to be placed by the petitioner could be of no assistance to her to show her possession. Thus, in the absence of any proper material forthcoming on behalf of the petitioner, it was held that she has failed utterly and miserably to establish her possession and that too beyond the statutory period as contemplated and as

required to be established under the law. Having regard to the exercise done by the lower appellate Court on a due appreciation of each and every document vis-à-vis her own statement which in no way comes to her rescue and as extracted by the lower appellate Court, the finding as arrived at is that of purely a fact which cannot be once again gone into or re-check in any mode of appreciation in exercise of powers conferred under Article 226 of the Constitution of India. Such finding of fact is binding on this Court and the question of any judicial review does not arise. It is not the case of the petitioner that the said findings are in any way not based upon any valid material or there is any failure on the part of the lower appellate Court to consider the record. This Court has already held in *M/s. Shalivahana Builders Private Limited., Secunderabad V. Ganapathy Co-op. Hsg. Society*[1] that the Writ Court cannot re-appreciate the evidence and the material available on record and substitute its findings. The same principle is also once again reiterated by the Division Bench of this Court in *M. Yadagiri Reddy v. V.C. Brahmanna*[2] to the effect that it cannot be unqualifiedly asserted that the Courts exercising power of judicial review have no part to play in the assessment of fact, and this role however, is distinct from the role of an appellate Court. Having regard to the aforesaid principles and especially in view of the categorical and staring findings of fact as arrived at by the lower appellate Court and

there being no further attempt on the part of the petitioner to show as to how the said finding is perverse, we are of the view that the petitioner has failed to make out any case warranting interference by this Court. Hence, we do not find any merits in any of the contentions as urged by the petitioner.

Both the Writ Petitions are accordingly dismissed. There shall be no order as to costs.

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B. PRAKASH RAO, J

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G. BHAVANI PRASAD, J

20th August 2007.

Chvn

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[1] 2003 AIH 2291

[2] 2005 (1) ALD 1 (DB)